

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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	:	
AVI COHEN, individually and on	:	
behalf of all others similarly situated,	:	
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	2:15-cv-03413-AMD-SIL
	:	
SLOMIN'S, INC., a New York	:	
corporation,	:	
	:	
<i>Defendant.</i>	:	
-----X	:	

STATUS REPORT REGARDING SETTLEMENT

As required by the Court's September 19, 2016 Minute Entry, the parties have described below their respective positions on the status of settlement discussions and further proceedings in this case.

Defendant's Position

In mid-August, the parties had appeared to have agreed to resolve this case on an individual basis. While Slomin's, Inc. ("Slomin's") denies that it engaged in any wrongdoing as alleged in Plaintiff's Complaint, Slomin's had long advocated for an individual resolution of these claims. Plaintiff's class claims are wholly without merit, and neither party benefits from protracted litigation related to Plaintiff's individual claim for recovery of certain statutory penalties.

Weeks after committing to recommend an individual settlement, on August 25, 2016, Plaintiff's counsel proposed certain non-monetary terms of this individual settlement to Slomin's. Slomin's had already provided documentation and an affidavit relating to some of the

practices referenced in the proposed terms. After receiving Plaintiff's proposal, Slomin's re-confirmed that all of these practices and procedures were already in existence. Slomin's counsel also conveyed to Plaintiff's counsel that Slomin's was not inclined to give Plaintiff the contractual right to enforce these already-existing procedures, but Slomin's remained interested in an individual resolution of this case on reasonable terms.

Plaintiff's counsel then submitted the September 16, 2016 status report, where Plaintiff's counsel noted that it was "currently working to prepare a draft settlement agreement for Defendant's review (subject to reaching a final agreement on all terms)." *See* Doc. No. 20. In response to this status report, the Court issued an order requesting that a further status report be filed on September 30, 2016.

On September 29, 2016, Plaintiff's counsel circulated a draft of this settlement agreement for review. This settlement agreement repeated verbatim the non-monetary terms Slomin's had already rejected, and it contained a placeholder suggesting Plaintiff's intent to insist on a payment of attorneys' fees.

Slomin's promptly raised its concerns regarding these provisions. With regard to the non-monetary terms of the settlement, Slomin's made clear that while it was willing to consider formally representing that these procedures were in place, it could not agree to give Plaintiff a contractual right to enforce these procedures into the future. Slomin's also made clear, as it had suggested previously, that it saw no basis for payment of attorneys' fees in connection with an individual resolution of this case. On September 30, 2016, in a draft status report circulated to Slomin's counsel for its review, Plaintiff's counsel first informed Slomin's counsel that it no longer remained interested in exploring a resolution of Plaintiff's claims.

In light of the status of settlement discussions, and notwithstanding the disputes that have developed very recently, Slomin's believes that a settlement conference with the Court would be productive. Slomin's respectfully requests that the Court schedule such a conference at the Court's convenience and provide the parties with the opportunity to submit a brief, of no more than 5 pages, further describing their respective positions with respect to the un-resolved settlement terms in advance of such a conference.

Plaintiff's Position

Setting aside any dispute between the Parties as to how the settlement discussions have proceeded in this case (which are significant), Plaintiff does not believe a settlement conference would be fruitful at this time. Absent discovery into (at a minimum) material issues such as the TCPA compliance procedures Defendant claims to have in place, whether it actually complies with those procedures, and how it is that Plaintiff (and other complainants) nevertheless received the unauthorized calls at issue, Plaintiff is not prepared to nor comfortable proceeding with a settlement (in any form) at this time.

Plaintiff and her counsel very much appreciate the Court's patience as the Parties attempted to work through these issues toward a potential resolution. Nevertheless, Plaintiff believes that the most appropriate way forward is for discovery—at least into the issues outlined above—to proceed at this time. Once that discovery is completed, the Parties will be in a better position to discuss their respective views of these issues, the merits of the claims and defenses asserted, and any potential resolution. Accordingly, Plaintiff respectfully requests that the Court set a Rule 16 conference at its convenience.¹

¹ Although Plaintiff would of course provide a more fulsome proposed discovery schedule in conjunction with any Rule 16 conference, he believes that the discovery outlined above can reasonably be completed within 90 days.

Respectfully submitted, this 30th day of September, 2016.

SLOMIN'S, INC.

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AVI COHEN, individually and on behalf of
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Dated: September 30, 2016

By: /s/ Stefan L. Coleman
One of Plaintiff's Attorneys

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